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Nb

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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8

DATE MAILED:

04/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/392,434

Applicant(s)

Bradford et al.

Examiner

Rabon Sergeant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 15, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

1. Claims 4, 7, 8, and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have claimed within claims 1 and 9 that (a) is a phosphate; however, within claims 4 and 12, (a) has been defined as a phosphonate.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-7 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sicken et al. ('965) or Fearing ('534 or '633), each in view of Keppeler et al. ('612).

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The primary references disclose the use of oligomeric organophosphorus flame retardants within polyurethane foams and further disclose that the oligomeric flame retardants may be blended with additional flame retardants. See column 4, line 32 within Sicken et al. See column 8, lines 27-34 within the Fearing references.

4. Though the references disclose that additional flame retarding agents may be used, the primary references fail to recite specific examples. However, non-halogenated phosphorus containing compounds were widely known flame retardants for polyurethane foams at the time of invention. This position is supported by the teachings of Keppeler et al. at column 7, line 33 through column 8, line 67.

5. Therefore, the position is taken that it would have been obvious to utilize blends of oligomeric and non-oligomeric, non-halogenated phosphorus flame retardants within polyurethane foam compositions, in accordance with the teachings of the primary references.

6. Applicants' argument that the list of flame retardants within Keppeler et al. is so long that it provides no teaching is not sufficient to remove the art rejection. The primary references teach that mixtures comprising other flame retardants may be used and the secondary reference provides a teaching of polyurethane foam flame retardants. Applicants' component (a) flame retardants are disclosed within the secondary reference. The position is taken that it would have been obvious to select any flame retardant from the list of the secondary reference. The burden rests with applicants to rebut the prima facie case of obviousness by such means as a showing of unexpected results, for example.

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7. Claims 7, 8, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sicken et al. ('965) or Fearing ('534 or '633), each in view of Keppeler et al. ('612), as applied to claims 1-7 above, and further in view of Hardy et al. ('035 or '042).

As aforementioned within paragraphs 3-5, the combined teachings of Sicken et al. or Fearing and Keppeler et al. are considered to render obvious the combined use of oligomeric and non-oligomeric phosphorus flame retardants; however, the non-hydroxyl group bearing oligomeric species of instant claims 7 and 8 are not disclosed by the primary references. Still, the claimed non-hydroxyl group bearing oligomeric species were known at the time of invention, as evidenced by Hardy et al. The position is taken that the oligomeric species of Hardy et al. are close enough in structure and function to those of the primary references that one would have reasonably expected them to function with non-oligomeric flame retardants, as taught by the primary references. Therefore, it would have been obvious to utilize the flame retardants of Hardy et al. with the aforementioned non-oligomeric flame retardants, so as to arrive at the instant invention.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (703) 308-2982.


RABON SERGENT
PRIMARY EXAMINER

Sergent/af

August 15, 2001